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*Counsel for Plaintiff Richard Maltz and
Co-Lead Counsel for Plaintiffs*

[Additional Counsel on Signature Page]

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

RICHARD MALTZ, derivatively on behalf of
ELECTROCORE, INC.,

Plaintiff,

vs.

FRANCIS R. AMATO, GLENN S. VRANIAK,
BRIAN POSNER, JOSEPH P. ERRICO,
MICHAEL G. ATIEH, NICHOLAS COLUCCI,
CARRIE S. COX, THOMAS J. ERRICO,
TREVOR J. MOODY, STEPHEN L. ONDRA,
MICHAEL W. ROSS, DAVID M. RUBIN,
JAMES L.L. TULLIS,

Defendants,

and

ELECTROCORE, INC.,

Nominal Defendant.

Case No. 3:21-cv-04135-AET-TJB

ERWIN YUSON, derivatively on behalf of
ELECTROCORE, INC.,

Plaintiffs,

Case No. 3:21-cv-04481

vs.

FRANCIS R. AMATO, GLENN S. VRANIAK,
BRIAN POSNER, JOSEPH P. ERRICO,
MICHAEL G. ATIEH, NICHOLAS COLUCCI,
CARRIE S. COX, THOMAS J. ERRICO,
TREVOR J. MOODY, STEPHEN L. ONDRA,
MICHAEL W. ROSS, DAVID M. RUBIN, and
JAMES L.L. TULLIS,

Defendants,

and

ELECTROCORE, INC.,

Nominal Defendant.

^{AT}
**JOINT STIPULATION AND ~~PROPOSED~~ ORDER TO
CONSOLIDATE, ESTABLISH A LEADERSHIP STRUCTURE, AND
STAY RELATED SHAREHOLDER DERIVATIVE ACTIONS**

WHEREAS, on March 4, 2021, Plaintiff Richard Maltz (“Maltz”) filed a shareholder derivative action on behalf of nominal defendant electroCore, Inc. (“electroCore” or the “Company”) in this Court alleging breaches of fiduciary duty, unjust enrichment, waste of corporate assets, violations of the Securities Exchange Act of 1934, and for contribution under Sections 11(f) of the Securities Act of 1933 and 21D of the Exchange Act against defendants Francis R. Amato, Glenn S. Vraniak, Brian Posner, Joseph P. Errico, Michael G. Atieh, Nicholas Colucci, Carrie S. Cox, Thomas J. Errico, Trevor J. Moody, Stephen L. Ondra, Michael W. Ross, David M. Rubin, and James L.L. Tullis (collectively, the “Individual Defendants” and together with electroCore, the “Defendants”), captioned *Maltz v. Amato, et al.*, Case No. 3:21-cv-04135-AET-TJB (the “Maltz Action”);

WHEREAS, on March 8, 2021, Plaintiff Erwin Yuson (“Yuson,” and together with Maltz, “Plaintiffs”) filed a shareholder derivative action on behalf of nominal defendant electroCore in

this Court alleging substantially the same facts and making similar claims against the same Individual Defendants in the *Maltz* Action, captioned *Yuson v. Amato, et al.*, Case No. 3:21-cv-04481 (the “*Yuson* Action,” and together with the *Maltz* Action, the “Related Derivative Actions”);

WHEREAS, the Defendants in the *Maltz* and *Yuson* Actions deny the allegations of the complaints;

WHEREAS, a putative securities class action lawsuit, asserting federal claims arising from facts common to those at issue in the Related Derivative Actions, is currently pending in the U.S. District Court for the District of New Jersey under the caption *Turnofsky v. electroCore, Inc., et al.*, Case No. 3:19-cv-18400-AET-TJB (the “Federal Securities Action”);

WHEREAS, under Fed. R. Civ. P. 42(a), when actions involve “a common question of law or fact,” the Court may “(1) join for hearing or trial any or all matters at issue in the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay”;

WHEREAS, the Related Derivative Actions challenge the same alleged conduct by the same Individual Defendants and involve common questions of law and fact;

WHEREAS, the parties therefore respectfully submit that consolidation of the Related Derivative Actions is appropriate;

WHEREAS, to avoid potentially duplicative actions and to prevent any waste of the Court’s resources, the parties agree that the Related Derivative Actions should be consolidated for all purposes, including pre-trial proceedings and trial, into a single consolidated action;

WHEREAS, in order to realize the efficiencies made possible by consolidation of the Related Derivative Actions, the Plaintiffs agree that The Rosen Law Firm, P.A. and The Brown

Law Firm, P.C., the respective resumes of which are attached hereto as Exhibits A and B, shall be designated as Co-Lead Counsel representing Plaintiffs in the consolidated action.¹

WHEREAS, based upon the overlapping parties and factual allegations contained in the Related Derivative Actions and the Federal Securities Action, and to avoid the unnecessary expenditure of judicial resources, the parties have agreed, subject to this Court's approval, that all proceedings and deadlines in the consolidated action should be temporarily stayed, until and through the resolution of any motion for summary judgment filed in the Federal Securities Action.

WHEREFORE, the parties, through their undersigned counsel, hereby agree, stipulate, and respectfully request that the Court enter an Order as follows:

1. All Defendants, to the extent they have not already done so, hereby accept service of the complaints filed in the *Maltz and Yuson* Actions as of today's date.
2. The following actions are hereby consolidated for all purposes, including pre-trial proceedings and trial, under Case No. 3:21-cv-04135-AET-TJB (the "Consolidated Action"), pursuant to Federal Rule of Civil Procedure 42(a):

<u>Case Name</u>	<u>Case Number</u>	<u>Date Filed</u>
<i>Maltz v. Amato, et al.</i>	3:21-cv-04135 -AET-TJB	March 4, 2021
<i>Yuson v. Amato, et al.</i>	3:21-cv-04481	March 8, 2021

3. Every pleading filed in the Consolidated Action, or in any separate action included herein, must bear the following caption:

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE ELECTROCORE, INC. DERIVATIVE
LITIGATION

Lead Case No. 3:21-cv-04135-AET-TJB

¹ Defendants take no position on the appointment of Plaintiffs' Lead Counsel.

4. All papers filed in connection with the Consolidated Action will be maintained in one file under Lead Case No. 3:21-cv-04135-AET-TJB.

5. Co-Lead Counsel for plaintiffs for the conduct of the Consolidated Action shall be:

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6. Plaintiffs' Co-Lead Counsel shall have the sole authority to speak for plaintiffs in the Consolidated Action in all matters regarding pre-trial procedure, trial, and settlement negotiations and shall make all work assignments in such manner as to facilitate the orderly and efficient prosecution of this litigation and to avoid duplicative or unproductive effort.

7. Co-Lead Counsel will be responsible for coordinating all activities and appearances on behalf of plaintiffs. No motion, request for discovery, or other pre-trial or trial proceedings will be initiated or filed by any plaintiffs in the Consolidated Action except through Co-Lead Counsel.

8. Defendants' counsel may rely upon all agreements made with Co-Lead Counsel, or other duly authorized representative of Co-Lead Counsel, and such agreements shall be binding on all plaintiffs.

9. All proceedings, including any motions practice, obligation to respond to the complaints in the Related Derivative Actions and any amended complaint, and all discovery and

disclosure obligations under the applicable local and federal rules, in the Consolidated Action shall be temporarily stayed until and through the resolution of any motion for summary judgment in the Federal Securities Action.

10. This Order shall apply to each derivative case arising out of the same, or substantially the same, transactions or events as these cases, which is subsequently filed in, removed to, reassigned to, or transferred to this Court. When a derivative case that properly belongs as part of *In re electroCore, Inc. Derivative Litigation*, Lead Case No. 3:21-cv-04135-AET-TJB, is hereafter filed in this Court, removed to this Court, reassigned to this Court, or transferred here from another court, this Court requests the assistance of counsel in calling to the attention of the Clerk of the Court the filing, removal, reassignment, or transfer of any case that might properly be consolidated as part of *In re electroCore, Inc. Derivative Litigation*, Lead Case No. 3:21-cv-04135-AET-TJB, and counsel are to assist in assuring that counsel in subsequent actions receive notice of this order.

11. Defendants shall promptly notify Plaintiffs of any filed or threatened shareholder derivative lawsuit(s) of which they become aware that makes similar allegations and/or claims as those made in the Consolidated Action (“Related Derivative Matter”).

12. If a Related Derivative Matter, wherever instituted, is not stayed for the same or longer duration than the stay of the Consolidated Action, Plaintiffs have the option to terminate the stay by giving thirty (30) days’ notice to the undersigned counsel for Defendants via email. Such email notice shall be given to each of the counsel with Dentons US LLP whose names appear in the signature blocks at the end of this Stipulation and Order, at the email addresses provided in such signature blocks.

13. Defendants shall promptly notify Plaintiffs of and seek to allow Plaintiffs to participate in any mediations or formal settlement talks in (a) the Federal Securities Action and (b) in any mediations or formal settlement talks in the securities class action lawsuit pending on appeal in the Appellate Division of the Superior Court of New Jersey, captioned *Paul Kuehl vs. electroCore, Inc., et al.*, Case No. SOM-L 000876-19 (together with the Federal Securities Action, the “Securities Class Actions”), and in (c) any Related Derivative Matter; provided that if Plaintiffs are not included in such mediation or formal settlement talks in any of the cases referenced in this paragraph 13 (a), (b), or (c), Defendants shall mediate with Plaintiffs at or about the same time.

14. Subject to the terms and conditions of an appropriate protective order to ensure the confidentiality of produced information to be negotiated for this Consolidated Action, and after such an appropriate protective order is entered by the Court, Defendants shall promptly produce to Plaintiffs any documents produced, written discovery, and deposition transcripts in either of the Securities Class Actions and in any Related Derivative Matter.

15. If notwithstanding this stay of proceedings Plaintiffs file any amended complaint(s), which Plaintiffs have the option to file, Defendants shall be under no obligation to respond to any such amended complaint during the pendency of the stay.

16. Within fourteen (14) days of the date that the stay of proceedings set forth in this Stipulation and Order is lifted, the parties shall meet and confer and submit a proposed scheduling order governing further proceedings in the Consolidated Action.

17. All hearings or conferences currently scheduled in the Related Derivative Actions shall be postponed until the date and time that will be specified in the proposed scheduling order to be submitted by the parties after the stipulated stay of proceedings set forth in this Stipulation and Order is lifted.

18. After the stay is lifted, Defendants shall not move to stay the Consolidated Action in deference to any other derivative action.

19. This Stipulation is without prejudice to any and all defenses Defendants may assert in any of the Related Derivative Actions or the Consolidated Action and is without prejudice to any and all claims Plaintiffs may assert in any of the Related Derivative Actions or the Consolidated Action.

IT IS SO STIPULATED.

Dated: April 14, 2021

THE ROSEN LAW FIRM, P.A.

By: /s/ Laurence Rosen

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Dated: April 14, 2021

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Counsel for Defendants

IT IS SO ORDERED this 30th day of April, 2021.


HONORABLE ANNE E. THOMPSON
UNITED STATES DISTRICT COURT